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09/896,307	06/29/2001	Jo Ann Brooks	15704	8373

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EXAMINER	
TORRES VELAZQUEZ, NORCA LIZ	
ART UNIT	PAPER NUMBER

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/896,307

Applicant(s)

BROOKS, JO ANN

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 13-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 13-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment and arguments filed on October 20, 2003 have been entered and fully considered. Claims 1-9, 11 and 13-30 are pending.
2. The rejection of claim 9 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been withdrawn in view of Applicants amendment.
3. The rejections of claim 23 under 35 U.S.C. 101 and 112, second paragraph, are maintained since there are no steps in the method/process for warming the washcloth.
4. The rejection of claims 4, 18 and 20 under 35 U.S.C. 112, second paragraph, have been withdrawn in view of Applicant's amendment.
5. With regards to the rejection of claims 1-9, 11, 13-22 and 24 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, Applicants argue that the terms and phrases such as "thermoretentive mixtures of low to mid melting point organic waxes" are suitably defined in the Specification and refer to an Example on page 11 of the Specification that shows that an oil-in-water emulsion including waxes and oil soluble polymers remained warm for 32 seconds on average versus approximately 10 seconds observed from a heated, conventional water solution. The applicants further state that "thermoretentive lipids" retain warmth three times (3x) longer than conventional cleansing solutions containing a predominance of water as known to one skilled in the art.

Applicant's arguments have been fully considered but they are not persuasive. While Applicants refer to the Example on page 11, the Specification does not disclose comparable results for conventional water solutions. The comparison of "approximately 10 seconds

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observed from a heated, conventional water solution” is not in the Specification. The term “thermoretentive” is still not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. The specification only talks about the present invention retaining warmth for three (3) times longer than conventional cleansing solutions which contain a predominance of water. (Page 6, first paragraph). However, it does not provide a standard of how long the conventional cleansing cloths hold the warmth. No results are provided that will show that the present invention provides the specific benefit over comparable products of the prior art. For examining purposes, it is noted that any material capable of retaining heat would read on the term “thermoretentive”.

6. The rejection of Claim 5 under 35 U.S.C. 112, second paragraph has been withdrawn.
7. The rejection of Claim 13 under 35 U.S.C. 112, second paragraph has been withdrawn.
8. The rejection of claims 1 and 14 under 35 U.S.C. 112, second paragraph has been withdrawn. For the record, Applicants defined as “low-end melting point waxes” those with temperatures of the range of about 37-48°C. (Refer to page 10 of arguments filed October 20, 2003. There is no defined range for “mid to high melting point waxes”.
9. The rejection of Claims 16 and 17 under 35 U.S.C. 112, second paragraph, has been withdrawn.
10. The rejection of Claim 21 under 35 U.S.C. 112, second paragraph, has been withdrawn.
11. With regards to the rejection of independent claim 1 under 35 U.S.C. 103(a) over Ponsi in view of McAtee, Applicants argue that Ponsi teaches a complex patient bathing system that includes a heat retaining “insulating and supporting layer 14” necessary to retain heat of a heated

cleansing solution. Further, the formulation of thermoretentive mixtures presently claimed in claim 1 has a higher boiling point than conventional water-based mixtures.

It is the Examiner's position that the nonwoven washcloths of Ponsi with a fluid that is absorptive of microwave energy is equivalent in scope to the thermoretentive components of the present invention and it is noted that the teachings of the Ponsi reference are not limited to water-based mixtures as Applicants are implying in their arguments. The reference's teachings are broad and could encompass fluids other than water-based solutions. With regards to the insulating and supporting layer 14 of the Ponsi reference, it is noted that this layer helps retain heat within the package (Column 4, lines 22-23), and is not necessarily for retaining heat of a heated cleansing solution as Applicants indicate in their response. The cleansing solution contained in the washcloths 16 is a fluid which generally absorbs microwave energy (Column 4, lines 17-19), therefore, it is the Examiner's position that the cleansing solution would be equivalent in scope to the thermoretentive components of the present invention.

With regards to the McATEE et al. reference, the Examiner has relied upon this reference to provide for the material of the cloth and that it is of a nonwoven structure. Further, the reference provides with teachings to use waxes and other materials that are well known in the art of disposable personal cleaning articles.

12. With regards to the rejection of independent claim 1 under 35 U.S.C. 103(a) over SKIBA in view of McAtee, Applicants argue that SKIBA is directed to a patient bathing system having a cleansing solution preferably composed of water. (See col. 2, lines 6-9).

Applicants are directed to the same citation of Skiba in which "the cleansing solution is preferably composed of water, cleansing agents and moisturizing agents."

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure in the Specification to support that "the oil-in-water emulsion is cooperable with the wash cloth to moisturize a skin surface for about 6 hours after use.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-9, 11, 13-27 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over PONSI et al. (US 5,906,278) in view of McATEE et al. (US 6,153,208).

PONSI et al. teaches a patient bathing system that includes impregnated washcloths that absorb microwave energy so that the contents of the package (of the bathing system) can be warmed while heat is retained by an insulating layer. (Abstract) The reference teaches that the washcloths are impregnated with a cleansing solution and the washcloths are preferably

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nonwoven. (Column 1, lines 60-64) The reference teaches that the outer package and the insulating and supporting layer of their invention are preferably made of materials generally impervious to microwave energy. On the other hand, the cleansing solution with which the washcloths are impregnated is preferably, a fluid that is generally absorptive of microwave energy. Accordingly, if the patient bathing system according to the invention is placed in a microwave oven, the cleansing solution is heated, and the insulating and supporting layer, being insulative, helps retain that heat within the outer package. (Column 2, lines 23-30)

PONSI et al. further teaches that the insulating and supporting layer of their invention is made of a material that is generally transparent to microwave energy. (Column 4, lines 14-16) It is noted that high density polyethylene is known for being transparent to microwave energy.

The PONSI et al. reference teaches nonwoven washcloths with a fluid that is absorptive of microwave energy that is equivalent in scope to the thermoretentive components of the present invention. However, the reference fails to explicitly disclose the structure of the cloth being a nonwoven material.

McATEE et al. discloses a disposable personal cleaning article and teaches the use of nonwoven substrates made from synthetic materials such as an apertured hydroentangled material containing about 50% rayon and 50% polyester, and carded hydroentangled material, containing a fiber composition of from 50% rayon/50% polyester. The reference teaches materials that can have a basis weight up to 115 gsy [4.01 ounces per yard squared]. (Refer to column 14, lines 54-67 through column 15, lines 1-46)

It is noted that hydroentanglement is an equivalent mechanical entanglement process to needle-punching. Therefore, it would have been obvious to have needled the nonwoven of

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McATEE rather than hydroentangling it, because needling was known as equivalent means of mechanically bonding nonwovens.

The reference teaches that the conditioning component of their invention may comprise a conditioning emulsion that is useful for providing a conditioning benefit to the skin during the use of the article. (Column 28, lines 63-67). The term "conditioning emulsion" means the combination of an internal phase comprising a water soluble conditioning agent that is enveloped by an external phase comprising an oil soluble agent. In preferred embodiments, the conditioning emulsion would further comprise an emulsifier. The conditioning emulsion comprises from about 0.25% to about 150%, by weight of the water insoluble substrate. (Column 29, lines 1-8)

The McATEE et al. reference teaches several compound that could be used in the conditioning emulsion of their invention.

With regards to claim 6, the use of caprylic/capric triglyceride is taught by the reference. (Column 26, lines 31-52)

With regards to claims 3, 16 and 17, the reference teaches the use of acrylates/C10-30 alkyl acrylate crosspolymer and also the use of PVP/Eicosene copolymer. (Column 40, lines 32-34)

With regards to claim 15, the reference teaches the use of emulsifiers that are oil soluble or miscible with the oil soluble external phase materials of their conditioning emulsions. (Refer to Column 29, lines 66-67 – Column 30, lines 1-27)

With regards to claim 18, the reference teaches the use of xanthan gum. (Column 36, lines 29-41)

The reference also teaches the use of conditioning components from the group consisting of glycerin monoesters, glycerin polyesters, silicone oil, silicone gum, vegetable oil, natural waxes and synthetic waxes. (Refer to claim 8) The reference also teaches the use of mineral oil, stearyl alcohol, candelilla wax, silicone waxes. (Refer to claim 10) On paragraph 28, line 48; the reference also teaches the use of propylene glycol. Suitable fatty acid ester for use in their invention include ester waxes, monoglycerides, diglycerides and triglycerides. For example, beeswax. (Column 32, lines 49-55)

Since both references are from the same field of endeavor, disposable personal cleaning cloths, the purpose disclosed by McATEE et al. would have been recognized in the pertinent art of PONSİ et al. It is noted that while the McATEE et al.'s invention is directed to a personal cleaning article that needs to be wetted before using, the use of the formulations listed above would be recognized in the art of PONSİ et al. since they will provide the cleaning and conditioning benefits to the consumer upon being in solution once wetted.

It is further noted that the McATEE et al. reference teaches the use of components that would read on the "thermoretentive polymer" and the "thermoretentive organic waxes" of the present invention. The property of retaining heat or conducting heat in a formulation is inherent to the physical properties of the compounds constituting it, the fact that the McATEE et al. does not teach that these compounds are used in their invention for their "thermoretentive or thermoconductive" properties does not change the physical nature of these compounds.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the PONSİ et al. reference and provide it with the components taught by McATEE et al. with the motivation of providing the washcloth with a cleansing

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formulation that satisfy a number of criteria that is acceptable to consumers, including cleansing effectiveness, skin feel and mildness to skin as disclosed by McATEE et al. (Column 1, lines 51-55)

16. Claims 1-9, 11, 13-27 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over SKIBA et al. (US 5,956,794) in view of McATEE et al. (US 6,153,208).

SKIBA et al. discloses a patient bathing system having at least one disposable washcloth for body cleansing. The washcloth comprises a blended cloth comprising first fibers and second fibers, with the fibers being blended by mechanical entanglement. (Column 1, lines 5-8 and lines 40-44) The reference teaches that in the preferred form of the invention, the first fibers comprise rayon and the second fibers comprise polyester. The rayon fibers are about 1.5 denier and about 1.5 inches in length, while the polyester fibers are about 4.75 denier and about 3 inches in length. The quantity of the rayon fibers comprises about 70% by weight, while the quantity of the polyester fibers comprises about 30% by weight. The fibers are in a concentration of from about 4.3 ounces per square yard to about 5.3 ounces per square yard for an average thickness of the blended cloth being 0.090 ounces. (Column 1, lines 51-67) The rayon and polyester fibers are blended by mechanical entanglement, such as needle punching. (Column 3, lines 7-9)

The reference further teaches that the washcloths are impregnated with cleansing solution preferably composed of water, cleansing agents and moisturizing agents. Preferably, the cleansing agents comprise surfactants and the moisturizing agents comprise humectants. (Column 2, lines 6-9) The reference also discloses that because the solution is intended to be a non-rinse solution, the primary constituent typically will be water. Preservatives may also be included to lengthen product life. Since many different commonly available cleansing solutions

can also be employed in the invention, further details are not set forth therein. (Column 3, lines 40-45)

The SKIBA et al. reference teaches the presently claimed needle-punched cloth of rayon and polyester, and teaches the use cleansing solutions impregnated in the cloth. However, the reference is silent to the claimed "thermoretentive polymer" and the "formulation of thermoretentive mixtures of low to mid-melting point organic waxes."

McATEE et al. discloses a disposable personal cleaning article and teaches the use of nonwoven substrates made from synthetic materials such as an apertured hydroentangled material containing about 50% rayon and 50% polyester, and carded hydroentangled material, containing a fiber composition of from 50% rayon/50% polyester. The reference teaches materials that can have a basis weight up to 115 gsy [4.01 ounces per yard squared]. (Refer to column 14, lines 54-67 through column 15, lines 1-46) The Examiner equates these materials to the "thermoretentive polymer".

The reference teaches that the conditioning component of their invention may comprise a conditioning emulsion that is useful for providing a conditioning benefit to the skin during the use of the article. (Column 28, lines 63-67). The term "conditioning emulsion" means the combination of an internal phase comprising a water soluble conditioning agent that is enveloped by an external phase comprising an oil soluble agent. In preferred embodiments, the conditioning emulsion would further comprise an emulsifier. The conditioning emulsion comprises from about 0.25% to about 150%, by weight of the water insoluble substrate. (Column 29, lines 1-8)

The McATEE et al. reference teaches several compounds that could be used in the conditioning emulsion of their invention. The Examiner equates these to the "thermoretentive mixtures".

With regards to claim 6, the use of caprylic/capric triglyceride is taught by the reference. (Column 26, lines 31-52)

With regards to claims 3, 16 and 17, the reference teaches the use of acrylates/C10-30 alkyl acrylate crosspolymer and also the use of PVP/Eicosene copolymer. (Column 40, lines 32-34)

With regards to claim 15, the reference teaches the use of emulsifiers that are oil soluble or miscible with the oil soluble external phase materials of their conditioning emulsions. (Refer to Column 29, lines 66-67 – Column 30, lines 1-27)

With regards to claim 18, the reference teaches the use of xanthan gum. (Column 36, lines 29-41)

The reference also teaches the use of conditioning components from the group consisting of glycerin monoesters, glycerin polyesters, silicone oil, silicone gum, vegetable oil, natural waxes and synthetic waxes. (Refer to claim 8) The reference also teaches the use of mineral oil, stearyl alcohol, candelilla wax, silicone waxes. (Refer to claim 10) On paragraph 28, line 48; the reference also teaches the use of propylene glycol. Suitable fatty acid ester for use in their invention include ester waxes, monoglycerides, diglycerides and triglycerides. For example, beeswax. (Column 32, lines 49-55)

With regards to claim 12, ceresin wax is a mineral wax with a melting point from 61 to 78 degrees Fahrenheit. It is used as a substitute for Beeswax or Paraffin wax. It is known to be used in cosmetic creams.

Since both references are from the same field of endeavor, disposable personal cleaning cloths, the purpose disclosed by McATEE et al. would have been recognized in the pertinent art of SKIBA et al.. It is noted that while the McATEE et al.'s invention is directed to a personal cleaning article that needs to be wetted before using, the use of the formulations listed above would be recognized in the art of SKIBA et al. since they will provide the cleaning and conditioning benefits to the consumer upon being in solution once wetted.

It is further noted that the McATEE et al. reference teaches the use of components that would read on the "thermoretentive polymer" and the "thermoretentive organic waxes" of the present invention. The property of retaining heat or conducting heat in a formulation is inherent to the physical properties of the compounds constituting it, the fact that the McATEE et al. does not teach that these compounds are used in their invention for their "thermoretentive or thermoconductive" properties does not change the physical nature of these compounds.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the SKIBA et al. reference and provide it with the components taught by McATEE et al. with the motivation of providing the washcloth with a cleansing formulation that satisfy a number of criteria that is acceptable to consumers, including cleansing effectiveness, skin feel and mildness to skin as disclosed by McATEE et al. (Column 1, lines 51-55)

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

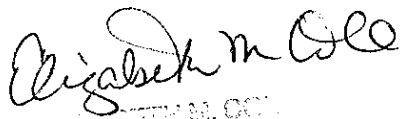
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

Norca L. Torres-Velazquez
Examiner
Art Unit 1771

January 12, 2004


ELIZABETH M. COLE
JAN 14 2004
EXAMINER